

Senate Bill 947

Sponsored by Senators DEMBROW, FAGAN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

- Expands definition of "family member" for purposes of family and medical leave.
- Makes family and medical leave requirements applicable to all employers, regardless of size of employer.
- Reduces number of days and hours employee must work for employer in order to become eligible employee.
- Extends length of leave employee may take for bereavement.
- Extends length of leave employee may take for family and medical leave.
- Requires employer to grant family leave with pay.
- Allows employee to determine order in which accrued leave is to be used when more than one type of accrued leave is available to employee.
- Allows employee who separates employment with employer to automatically reestablish eligibility to take family and medical leave if certain conditions are met.
- Allows recovery of compensatory and punitive damages for civil action brought alleging violation of family and medical leave requirements.

A BILL FOR AN ACT

1
2 Relating to family leave; amending ORS 659A.090, 659A.150, 659A.153, 659A.156, 659A.162, 659A.165,
3 659A.174 and 659A.885.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 659A.090 is amended to read:

6 659A.090. As used in ORS 659A.090 to 659A.099:

7 (1) Notwithstanding ORS 659A.001, "employee" means an individual who performs services for
8 compensation for an employer [*for an average of at least 20 hours per week*]. "Employee" includes
9 all individuals employed at any site owned or operated by an employer, but does not include inde-
10 pendent contractors.

11 (2) Notwithstanding ORS 659A.001, "employer" means:

12 (a) A person, firm, corporation, partnership, legal representative or other business entity that
13 engages in any business, industry, profession or activity in this state and that employs [*25 or more*]
14 **one or more** persons in the State of Oregon for each working day during each of 20 or more cal-
15 endar workweeks in the year in which leave is taken under ORS 659A.093 or the year immediately
16 preceding the year in which the leave is to be taken;

17 (b) The state, and a department, agency, board or commission of the state; and

18 (c) A local government, including, but not limited to, a county, city, town, municipal corporation,
19 independent public corporation or political subdivision of the state.

20 (3) "Period of military conflict" means a period of war:

21 (a) Declared by the United States Congress;

22 (b) Declared by executive order of the President of the United States; or

23 (c) In which a reserve component of the Armed Forces of the United States is ordered to active
24 duty pursuant to Title 32 of the United States Code or section 12301 or 12302 of Title 10 of the

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 United States Code.

2 **SECTION 2.** ORS 659A.150 is amended to read:

3 659A.150. As used in ORS 659A.150 to 659A.186:

4 **(1) “Activities of daily living” has the meaning given that term in ORS 410.600.**

5 [(1)] **(2) “Covered employer” means an employer described in ORS 659A.153.**

6 [(2)] **(3) “Eligible employee” means any employee of a covered employer other than those em-**
 7 **ployees exempted under [the provisions of] ORS 659A.156.**

8 [(3)] **(4) “Family leave” means a leave of absence described in ORS 659A.159, except that “family**
 9 **leave” does not include leave taken by an eligible employee who is unable to work because of a**
 10 **disabling compensable injury, as defined in ORS 656.005, under ORS chapter 656.**

11 [(4)] **(5) “Family member” means:**

12 **(a) The spouse of an employee, the biological, adoptive or foster parent, stepparent or child**
 13 **of the employee, the grandparent or grandchild of the employee, a parent-in-law of the employee or**
 14 **a person with whom the employee was or is in a relationship of in loco parentis[.];**

15 **(b) An individual who is biologically related to the employee;**

16 **(c) An individual who is legally recognized under the laws of the state as related to the**
 17 **employee;**

18 **(d) An individual for whom the employee is responsible for providing health care, assist-**
 19 **ance in accessing or managing medical treatment or support with the activities of daily liv-**
 20 **ing;**

21 **(e) An individual who lives with the employee and with whom the employee shares re-**
 22 **sponsibility for each other’s common welfare; or**

23 **(f) Any other individual whose close association with the employee is equivalent to a**
 24 **family relationship as evidenced by a nexus of factors including, but not limited to:**

25 **(A) A shared responsibility for financial obligations;**

26 **(B) Signs of intent to marry;**

27 **(C) Children in common;**

28 **(D) The length of the personal relationship between the individual and the employee; or**

29 **(E) Common ownership of real or personal property.**

30 [(5)] **(6) “Health care provider” means:**

31 **(a) A person who is primarily responsible for providing health care to an eligible employee or**
 32 **a family member of an eligible employee, who is performing within the scope of the person’s pro-**
 33 **fessional license or certificate and who is:**

34 **(A) A physician licensed under ORS chapter 677;**

35 **(B) A physician assistant licensed under ORS 677.505 to 677.525;**

36 **(C) A dentist licensed under ORS 679.090;**

37 **(D) A psychologist licensed under ORS 675.030;**

38 **(E) An optometrist licensed under ORS 683.070;**

39 **(F) A naturopath licensed under ORS 685.080;**

40 **(G) A registered nurse licensed under ORS 678.050;**

41 **(H) A nurse practitioner certified under ORS 678.375;**

42 **(I) A direct entry midwife licensed under ORS 687.420;**

43 **(J) A licensed registered nurse who is certified by the Oregon State Board of Nursing as a nurse**
 44 **midwife nurse practitioner;**

45 **(K) A regulated social worker authorized to practice regulated social work under ORS 675.510**

1 to 675.600; or

2 (L) A chiropractic physician licensed under ORS 684.054, but only to the extent the chiropractic
3 physician provides treatment consisting of manual manipulation of the spine to correct a subluxation
4 demonstrated to exist by X-rays.

5 (b) A person who is primarily responsible for the treatment of an eligible employee or a family
6 member of an eligible employee solely through spiritual means, including but not limited to a
7 Christian Science practitioner.

8 **(7) “Medical treatment” has the meaning given that term in ORS 109.572.**

9 [(6)] **(8) “Serious health condition” means:**

10 (a) An illness, injury, impairment or physical or mental condition that requires inpatient care
11 in a hospital, hospice or residential medical care facility;

12 (b) An illness, disease or condition that in the medical judgment of the treating health care
13 provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility
14 of death in the near future, or requires constant care; or

15 (c) Any period of disability due to pregnancy, or period of absence for prenatal care.

16 **SECTION 3.** ORS 659A.153 is amended to read:

17 659A.153. (1) The requirements of ORS 659A.150 to 659A.186 apply only to employers who em-
18 ploy [25 or more] **one or more** persons in the State of Oregon for each working day during each
19 of 20 or more calendar workweeks in the year in which the leave is to be taken or in the year im-
20 mediately preceding the year in which the leave is to be taken.

21 (2) The requirements of ORS 659A.150 to 659A.186 do not apply to any employer who offers to
22 an eligible employee a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal
23 Revenue Code of 1986, providing, as one of its options, employee leave at least as generous as the
24 leave required by ORS 659A.150 to 659A.186.

25 **SECTION 4.** ORS 659A.156 is amended to read:

26 659A.156. (1) All employees of a covered employer are eligible to take leave for one of the pur-
27 poses specified in ORS 659A.159 [(1)(b) to (e)] **(1) except[:]**

28 [(a)] an employee who was employed by the covered employer for fewer than [180] **30** days im-
29 mediately before the date on which the family leave would commence.

30 [(b) *An employee who worked an average of fewer than 25 hours per week for the covered employer*
31 *during the 180 days immediately preceding the date on which the family leave would commence.*]

32 [(2) *All employees of a covered employer are eligible to take leave for the purpose specified in ORS*
33 *659A.159 (1)(a) except an employee who was employed by the covered employer for fewer than 180 days*
34 *immediately before the date on which the family leave would commence.*]

35 **(2) If an employee is rehired by a covered employer after separation of employment with**
36 **the employer, the employee is immediately considered an eligible employee on the date of**
37 **rehire if the employee:**

38 **(a) Was an eligible employee at the time of the separation of employment; and**

39 **(b) Is rehired within 180 days after the separation of employment.**

40 **SECTION 5.** ORS 659A.162 is amended to read:

41 659A.162. (1) Except as specifically provided by ORS 659A.150 to 659A.186, an eligible employee
42 is entitled to up to a total of [12] **24** weeks of family leave within any one-year period.

43 [(2)(a) *Except as provided by paragraph (b) of this subsection, an eligible employee is entitled to*
44 *a total of two weeks of family leave for the purposes described in ORS 659A.159 (1)(e).*]

45 [(b)] **(2)(a)** An eligible employee is entitled to [the period of leave described in paragraph (a) of

1 *this subsection*] **family leave for the purposes described in ORS 659A.159 (1)(e)** upon the death
 2 of each family member of the employee within any one-year period, except that leave taken as pro-
 3 vided by this subsection may not exceed the total period of family leave authorized by subsection
 4 (1) of this section.

5 [(c)] (b) A covered employer may not require an eligible employee to take multiple periods of
 6 leave described in ORS 659A.159 (1)(e) concurrently if more than one family member of the employee
 7 dies during the one-year period.

8 [(d)] (c) All leave taken for the purposes described in ORS 659A.159 (1)(e) shall be counted to-
 9 ward the total period of family leave authorized by subsection (1) of this section.

10 (3)(a) In addition to the [12] **24** weeks of family leave authorized by subsection (1) of this section,
 11 [a female] **an** eligible employee may take a total of [12] **24** weeks of leave within any one-year period
 12 for an illness, injury or condition related to pregnancy or childbirth that disables the eligible em-
 13 ployee from performing any available job duties offered by the covered employer.

14 (b) An eligible employee who takes [12] **24** weeks of family leave within a one-year period for
 15 the purpose specified in ORS 659A.159 (1)(a) may take up to an additional [12] **24** weeks of leave
 16 within the one-year period for the purpose specified in ORS 659A.159 (1)(d).

17 (4) When two or more family members work for the same covered employer, the eligible em-
 18 ployees may [not] take concurrent family leave [unless:].

19 [(a) *One employee needs to care for another employee who is a family member and who is suffering*
 20 *from a serious health condition;*]

21 [(b) *One employee needs to care for a child who has a serious health condition while another em-*
 22 *ployee who is a family member is also suffering from a serious health condition; or*]

23 [(c) *The employees are taking leave described in ORS 659A.159 (1)(e).*]

24 (5) An eligible employee may take family leave for the purpose specified in ORS 659A.159 (1)(a)
 25 in two or more nonconsecutive periods of leave only with the approval of the employer.

26 (6) Leave need not be provided to an eligible employee by a covered employer for the purpose
 27 specified in ORS 659A.159 (1)(d) if another family member is available to care for the child.

28 (7) A covered employer may not reduce the amount of family leave available to an eligible em-
 29 ployee under this section by any period the employee is unable to work because of a disabling
 30 compensable injury.

31 (8)(a) The Commissioner of the Bureau of Labor and Industries shall adopt rules governing when
 32 family leave for a serious health condition of an eligible employee or a family member of the eligible
 33 employee may be taken intermittently or by working a reduced workweek. Rules adopted by the
 34 commissioner under this paragraph shall allow taking of family leave on an intermittent basis or by
 35 use of a reduced workweek to the extent permitted by federal law and to the extent that taking
 36 family leave on an intermittent basis or by use of a reduced workweek does not result in the loss
 37 of an eligible employee's exempt status under the federal Fair Labor Standards Act.

38 (b) The commissioner shall adopt rules governing when family leave for the purposes described
 39 in ORS 659A.159 (1)(e) may be taken to the extent permitted by federal law and to the extent that
 40 taking family leave on an intermittent basis does not result in the loss of an eligible employee's
 41 exempt status under the federal Fair Labor Standards Act.

42 **SECTION 6.** ORS 659A.165 is amended to read:

43 659A.165. (1) Except as provided in subsection (2) of this section, a covered employer may re-
 44 quire an eligible employee to give the employer written notice at least 30 days before commencing
 45 family leave. The employer may require the employee to include an explanation of the need for the

1 leave in the notice.

2 (2) An eligible employee may commence taking family leave without prior notice under the fol-
3 lowing circumstances:

- 4 (a) An unexpected serious health condition of an employee or family member of an employee;
- 5 (b) An unexpected illness, injury or condition of a child of the employee that requires home care;
- 6 (c) A premature birth, unexpected adoption or unexpected foster placement; or
- 7 (d) The death of a family member.

8 (3) If an employee commences leave without prior notice under subsection (2) of this section, the
9 employee must give oral notice to the employer within 24 hours of the commencement of the leave,
10 and must provide the written notice required by subsection (1) of this section within three days after
11 the employee returns to work. The oral notice required by this subsection may be given by any
12 other person on behalf of the employee taking the leave.

13 *[(4) Except as provided in this subsection, if the employee fails to give notice as required by sub-*
14 *sections (1) and (3) of this section, the employer may reduce the total period of family leave authorized*
15 *by ORS 659A.162 by three weeks, and the employee may be subject to disciplinary action under a*
16 *uniformly applied policy or practice of the employer. A reduction of family leave under this subsection*
17 *may not limit leave described in ORS 659A.159 (1)(e).]*

18 **SECTION 7.** ORS 659A.174 is amended to read:

19 659A.174. (1) Except as provided [*in subsection (2) of this section, and unless otherwise provided*]
20 by the terms of [*an agreement between the eligible employee and the covered employer,*] a collective
21 bargaining agreement, [*or an employer policy,*] family leave [*is not required to*] **must** be granted with
22 pay **at the employee's regular rate of pay.**

23 *[(2) An employee taking family leave is entitled to use any paid accrued sick leave or any paid*
24 *accrued vacation leave during the period of family leave, or to use any other paid leave that is offered*
25 *by the employer in lieu of vacation leave during the period of family leave.]*

26 *[(3)]* (2) Subject to the terms of any agreement between the eligible employee and the covered
27 employer or the terms of a collective bargaining agreement, the [*employer*] **employee** may determine
28 the particular order in which accrued leave is to be used in circumstances in which more than one
29 type of accrued leave is available to the employee.

30 **SECTION 8.** ORS 659A.885, as amended by section 9, chapter 197, Oregon Laws 2017, and sec-
31 tion 13, chapter 691, Oregon Laws 2017, is amended to read:

32 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
33 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
34 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
35 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
36 court may order back pay in an action under this subsection only for the two-year period imme-
37 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
38 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
39 year period immediately preceding the filing of the action. In any action under this subsection, the
40 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
41 cept as provided in subsection (3) of this section:

- 42 (a) The judge shall determine the facts in an action under this subsection; and
- 43 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall
44 review the judgment pursuant to the standard established by ORS 19.415 (3).

45 (2) An action may be brought under subsection (1) of this section alleging a violation of:

1 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
2 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
3 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
4 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
5 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
6 659A.318, 659A.320, 659A.355 or 659A.421; or

7 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

8 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
9 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
10 659A.082, 659A.103 to 659A.145, **659A.150 to 659A.186**, 659A.199, 659A.203, 659A.228, 659A.230,
11 659A.250 to 659A.262, 659A.290, 659A.318, 659A.355 or 659A.421:

12 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
13 compensatory damages or \$200, whichever is greater, and punitive damages;

14 (b) At the request of any party, the action shall be tried to a jury;

15 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
16 ment pursuant to the standard established by ORS 19.415 (1); and

17 (d) Any attorney fee agreement shall be subject to approval by the court.

18 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-
19 olation of ORS 652.220, the court may award punitive damages if:

20 (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted
21 with malice or acted with willful and wanton misconduct; or

22 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
23 659A.850 for a violation of ORS 652.220.

24 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060, the
25 court may award, in addition to the relief authorized under subsection (1) of this section,
26 compensatory damages or \$200, whichever is greater.

27 (6) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574
28 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this
29 section, compensatory damages or \$250, whichever is greater.

30 (7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,
31 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil
32 penalty in the amount of \$720.

33 (8) Any individual against whom any distinction, discrimination or restriction on account of
34 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
35 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
36 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
37 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
38 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
39 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
40 section:

41 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
42 compensatory and punitive damages;

43 (b) The operator or manager of the place of public accommodation, the employee or person
44 acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all
45 damages awarded in the action;

1 (c) At the request of any party, the action shall be tried to a jury;

2 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

3 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
4 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable
5 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
6 and

7 (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the
8 judgment pursuant to the standard established by ORS 19.415 (1).

9 (9) When the commissioner or the Attorney General has reasonable cause to believe that a
10 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
11 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
12 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
13 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
14 manner as a person or group of persons may file a civil action under this section. In a civil action
15 filed under this subsection, the court may assess against the respondent, in addition to the relief
16 authorized under subsections (1) and (3) of this section, a civil penalty:

17 (a) In an amount not exceeding \$50,000 for a first violation; and

18 (b) In an amount not exceeding \$100,000 for any subsequent violation.

19 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
20 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
21 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
22 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
23 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
24 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
25 appealing an adverse decision of the trial court.

26 (11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145
27 or 659A.421 or discrimination under federal housing law:

28 (a) "Aggrieved person" includes a person who believes that the person:

29 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

30 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to
31 occur.

32 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
33 right in the action. The Attorney General may intervene in the action if the Attorney General cer-
34 tifies that the case is of general public importance. The court may allow an intervenor prevailing
35 party costs and reasonable attorney fees at trial and on appeal.

36 **SECTION 9.** ORS 659A.885, as amended by sections 9 and 10, chapter 197, Oregon Laws 2017,
37 and section 13, chapter 691, Oregon Laws 2017, is amended to read:

38 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
39 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
40 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
41 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
42 court may order back pay in an action under this subsection only for the two-year period imme-
43 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
44 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
45 year period immediately preceding the filing of the action. In any action under this subsection, the

1 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
2 cept as provided in subsection (3) of this section:

3 (a) The judge shall determine the facts in an action under this subsection; and

4 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall
5 review the judgment pursuant to the standard established by ORS 19.415 (3).

6 (2) An action may be brought under subsection (1) of this section alleging a violation of:

7 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
8 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
9 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
10 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
11 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
12 659A.318, 659A.320, 659A.355, 659A.357 or 659A.421; or

13 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

14 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
15 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
16 659A.082, 659A.103 to 659A.145, **659A.150 to 659A.186**, 659A.199, 659A.203, 659A.228, 659A.230,
17 659A.250 to 659A.262, 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421:

18 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
19 compensatory damages or \$200, whichever is greater, and punitive damages;

20 (b) At the request of any party, the action shall be tried to a jury;

21 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
22 ment pursuant to the standard established by ORS 19.415 (1); and

23 (d) Any attorney fee agreement shall be subject to approval by the court.

24 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-
25 olation of ORS 652.220, the court may award punitive damages if:

26 (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted
27 with malice or acted with willful and wanton misconduct; or

28 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
29 659A.850 for a violation of ORS 652.220.

30 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060, the
31 court may award, in addition to the relief authorized under subsection (1) of this section,
32 compensatory damages or \$200, whichever is greater.

33 (6) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574
34 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this
35 section, compensatory damages or \$250, whichever is greater.

36 (7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,
37 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil
38 penalty in the amount of \$720.

39 (8) Any individual against whom any distinction, discrimination or restriction on account of
40 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
41 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
42 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
43 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
44 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
45 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-

1 section:

2 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
3 compensatory and punitive damages;

4 (b) The operator or manager of the place of public accommodation, the employee or person
5 acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all
6 damages awarded in the action;

7 (c) At the request of any party, the action shall be tried to a jury;

8 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

9 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
10 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable
11 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
12 and

13 (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the
14 judgment pursuant to the standard established by ORS 19.415 (1).

15 (9) When the commissioner or the Attorney General has reasonable cause to believe that a
16 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
17 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
18 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
19 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
20 manner as a person or group of persons may file a civil action under this section. In a civil action
21 filed under this subsection, the court may assess against the respondent, in addition to the relief
22 authorized under subsections (1) and (3) of this section, a civil penalty:

23 (a) In an amount not exceeding \$50,000 for a first violation; and

24 (b) In an amount not exceeding \$100,000 for any subsequent violation.

25 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
26 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
27 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
28 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
29 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
30 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
31 appealing an adverse decision of the trial court.

32 (11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145
33 or 659A.421 or discrimination under federal housing law:

34 (a) "Aggrieved person" includes a person who believes that the person:

35 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

36 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to
37 occur.

38 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
39 right in the action. The Attorney General may intervene in the action if the Attorney General cer-
40 tifies that the case is of general public importance. The court may allow an intervenor prevailing
41 party costs and reasonable attorney fees at trial and on appeal.

42